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FOR THE DISTRICT OF SOUTH CAROLINA

2008 SEP 11 A 11:31

Michael Hitter, #071198,	)	C. A. No. 2:07-0896-TLW-RSC
	)	
Plaintiff,	)	
	)	
-versus-	)	<b><u>REPORT AND RECOMMENDATION</u></b>
	)	
Sumter County Courthouse	)	
Holding Area for Court and	)	
et al., in their official	)	
capacity and unidentified	)	
capacity,	)	
	)	
Defendants.	)	

The death of the plaintiff on May 23, 2008, during the pendency of this action has come to the attention of the court.


Rule 25(a) of the Federal Rules of Civil Procedure provides:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons, and may be served in any judicial district. Unless the motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for the service of the motion, the action shall be dismissed as to the deceased party.

On June 6, 2008, an order was entered advising that unless an appropriate party made a motion under Rule 25 of the Federal Rules of Civil Procedure for substitution not later than ninety (90) days, this action would be subject to dismissal.

As of this date, nothing has been filed in response to the order of this court. Therefore, it is recommended that this action be dismissed with prejudice for failure to prosecute and failure to respond to the Order of this court. Rule 41(b) and 25(a) Federal Rules of Civil Procedure.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Robert S. Carr". The signature is written in a cursive, somewhat stylized font.

Robert S. Carr  
United States Magistrate Judge

Charleston, South Carolina

September 11, 2008

**Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk  
United States District Court  
P.O. Box 835  
Charleston, South Carolina 29402

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).